

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

RICHARD MA and FRED DEVEREAUX,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

MAPFRE U.S.A. CORP. and THE COMMERCE
INSURANCE COMPANY,

Defendants.

BRIAN CONWAY, individually and
on behalf of all similarly situated persons,

Case No. 1:23-cv-12059

Plaintiff,

v.

MAPFRE U.S.A. CORP. and THE COMMERCE
INSURANCE COMPANY,

Defendants.

PAMELA BROWN, individually and
on behalf of all others similarly situated,

Case No. 1:23-cv-12076

Plaintiff,

v.

MAPFRE U.S.A. CORP. and THE COMMERCE
INSURANCE COMPANY,

Case No. 3:23-CV-12101

Defendants.

<p>LYNNE ALEXANDEROWICS, individually and on behalf of all similarly situated persons,</p> <p style="text-align: center;">Plaintiff, v.</p> <p>MAPFRE U.S.A. CORP. and THE COMMERCE INSURANCE COMPANY,</p> <p style="text-align: center;">Defendants.</p>	Case No. 4:23-CV-40125
<p>BRIAN RAY, individually and on behalf of all similarly situated persons,</p> <p style="text-align: center;">Plaintiff, v.</p> <p>MAPFRE U.S.A. CORP. and THE COMMERCE INSURANCE COMPANY,</p> <p style="text-align: center;">Defendants.</p>	Case No. 1:23-CV-12214
<p>VERONICA GREGORY, individually and on behalf of all similarly situated persons,</p> <p style="text-align: center;">Plaintiff, v.</p> <p>MAPFRE U.S.A. CORP. and THE COMMERCE INSURANCE COMPANY,</p> <p style="text-align: center;">Defendants.</p>	Case No. 1:23-cv-12225

**DECLARATION OF MARK B. DESANTO IN SUPPORT OF PLAINTIFFS'
UNOPPOSED MOTION TO APPOINT
AN EXECUTIVE COMMITTEE PURSUANT TO FED. R. CIV. P. 23(G)**

I, Mark B. DeSanto, hereby declare as follows:

1. I am one of Plaintiffs' Counsel in the above-captioned matter.
2. I submit this Declaration in support of Plaintiffs' Unopposed Motion to Consolidate Related Actions and Appoint Interim Co-Lead Class Counsel.
3. I am Senior Counsel at Berger Montague PC ("Berger Montague"), which is one of

the preeminent class action law firms in the United States and one of the nation's oldest and most respected class action law firms, having litigated class actions for 53 years. During its 53+ year history, Berger Montague has played lead roles in major class action cases and obtained settlement and recoveries totaling well over \$50 billion for its clients and the classes it has represented. Berger Montague is a full-spectrum class action and complex civil litigation firm, with nationally known attorneys highly sought after for their legal skills. The firm has been recognized by courts throughout the country for its ability and experience in handling major complex litigation, particularly in the fields of data breach and privacy litigation, antitrust, securities, mass torts, civil and human rights, whistleblower cases, employment, and consumer protection. In numerous precedent-setting cases, the firm has played a principal or lead role. Recently, Berger Montague was one of only three law firms in the country named as a 2023 Law Firm of the Year Finalist by The Legal Intelligencer, and the only plaintiffs' firm in the country to receive that recognition. The National Law Journal, which recognizes a select group of law firms each year that have done "exemplary, cutting-edge work on the plaintiffs' side," has selected Berger Montague in 12 out of 14 years (2003-05, 2007-13, 2015-16) for its "Hot List" of top plaintiff-oriented litigation firms in the United States. In 2018 and 2019, the National Law Journal recognized Berger Montague as "Elite Trial Lawyers" after reviewing more than 300 submissions for this award. The firm has also achieved the highest possible rating by its peers and opponents as reported in Martindale-Hubbell and was ranked as a 2019 "Best Law Firm" by U.S. News - Best Lawyers. Currently, Berger Montague consists of over 100 lawyers, 17 paralegals, and an experienced support staff. Few firms in the United States have Berger Montague's breadth of practice and match its successful track record in such a broad array of complex litigation.

4. E. Michelle Drake is an Executive Shareholder at Berger Montague PC, and leads the Firm's Minneapolis office. She serves as the co-chair of Berger Montague's Technology, Privacy & Data Breach Practice Group, as well as its Consumer Protection Department. Ms. Drake has successfully served as lead counsel (or other leadership roles) representing consumers in *dozens* of consumer privacy class actions that resulted in class recoveries valued well into the *billions* of dollars. *See supra ¶ 4.*

5. Berger Montague, Mark B. DeSanto, and E. Michelle Drake have extensive leadership and/or litigation experience in data breach and privacy cases and have been involved in some of the largest and/or most highly publicized data breach class actions in United States history.

The below list of exemplar cases is representative of that experience:

- *In re: MGM Resorts International Data Breach Litigation*, No.: 2:20-cv-00376 (D. Nev.) (Ms. Drake was appointed co-lead counsel in this data breach class action affecting an estimated 200 million consumers);
- *Yeh v. Twitter*, No.: 4:23-cv-01790 (N.D. Cal.) (Ms. Drake is serving in leadership role in class action lawsuit alleging more than 140 million Twitter users provided email addresses or telephone numbers based on deceptive statements);
- *In re Target Corp. Customer Data Security Breach Litigation*, No. 14-2522 (D. Minn.) (Ms. Drake served as liaison counsel and achieved a settlement on behalf of a class of approximately 100 million consumers upheld by the Eighth Circuit);
- *In re: Anthem, Inc. Data Breach Litig.*, MDL 2617, No. 15-MD-02617 (N.D. Cal.) (Berger Montague assisted lead counsel in this class action for a data breach involving 80 million insureds' personal information including Social Security numbers and other sensitive information. The case settled in 2018 for a non-reversionary common fund totaling \$115 million, representing the then-largest data breach settlement in history);
- *In re TJX Cos. Retail Security Breach Litigation*, No. 07-10162 (D. Mass.) (Berger Montague was appointed co-lead counsel in a data breach impacted 45 million individuals. A settlement was reached valued at over \$200 million, the terms of which became the template for most subsequent data breach settlements. In approving the settlement, former Chief Judge William Young praised the result as an "excellent settlement" containing "innovative" and "groundbreaking" elements);
- *In re Heartland Payment Systems, Inc. Customer Data Security Breach Litigation*, No. H-10-171 (S.D. Tex.) (Berger Montague was appointed to Plaintiff's Steering Committee in class action for data breach involving 100 million credit and debit card numbers);
- *Clark v. Trans Union, LLC*, No. 3:15-cv-00391 (E.D. Va.) (Ms. Drake was appointed co-lead counsel in this consumer privacy and protection matter, achieving monetary and injunctive relief valued in the billions of dollars on behalf of a class of approximately 81 million consumers);
- *Clark v. Experian Info. Sols., Inc.*, No. 3:16-cv- 00032 (E.D. Va., Hon. M. Hannah Lauck). (Ms. Drake served as co-lead counsel in this consumer privacy and protection matter, achieving monetary and injunctive relief valued in the billions of dollars on behalf of a class of approximately 50 million consumers);
- *Thomas v. Equifax Info. Services, LLC*, No. 3:18-cv-00684 (E.D. Va.) (Ms. Drake served as co-lead counsel in this consumer privacy and protection matter, achieving monetary and injunctive relief valued in the billions of dollars on behalf of a class of approximately 69 million consumers);
- *In re TransUnion Rental Screening Solutions, Inc. FCRA Litigation*, No. 1:20-md-02933 (N.D. Ga.) (Ms. Drake served as lead counsel in this consolidated MDL, achieving resolution on behalf of hundreds of thousands of individual consumers, final settlement approval pending);
- *Beckett v. Aetna, Inc.*, No. 17-cv-03864 (E.D. Pa.) (Berger Montage was appointed co- lead

counsel in case involving public disclosure of patient HIV information, which settled in a non-reversionary \$17 million fund. Each class member received an automatic payment of \$500 without being required to fill out a claim form, and class members were also allowed to submit claims for up to \$20,000 for financial or non-financial harm);

- *In re: American Medical Collection Agency, Inc. Customer Data Security Breach Litig.*, No. 19-md-02904 (D.N.J.) (Ms. Drake was appointed to the Plaintiff's Steering Committee in the Quest Diagnostics track, which is the largest track in the coordinated MDL proceedings in this class action for a data breach impacting over 20 million patients of various medical labs);
- *In re: Experian Data Breach Litig.*, No. 15-cv-01592 (C.D. Cal.) (Berger Montague was appointed to the Plaintiff's Steering Committee in this class action for a data breach involving 15 million Social Security numbers and related personal information from a Big-Three credit reporting agency. The case settled in 2019 for benefits valued at over \$170 million);
- *In re GEICO Customer Data Breach Litigation*, No. 21-CV-2210 (E.D.N.Y.) (Ms. Drake was appointed co-lead counsel in privacy class action alleging GEICO posted millions of consumers' drivers' license numbers on its website in violation of the federal Drivers' Privacy Protection Act);
- *In re: Countrywide Fin'l. Corp. Customer Data Security Breach Litig.*, MDL 1998, No. 08-MD-01998 (W.D. Ky.) (Berger Montague was appointed to the Plaintiff's Steering Committee in this class action for a data breach involving 17 million individuals);
- *In Re: Capital One Customer Data Security Breach Litigation*, No. 1:19-MD-02915 (E.D. Va.) (Berger Montague assisted lead counsel in class action for data breach impacting 98 million individuals);
- *Nelson et al. v. Connexin Software Inc.*, No. 2:22-cv-04676-JDW (E.D. Pa.), ECF No. 48 at 1-2 (I was appointed to plaintiffs steering committee in contested lead counsel application in class action for data breach impacting 2.2 million individuals); and
- *Meyer v. NCB Management Services, Inc.*, No. 2:23-CV-01340 (E.D. Pa.), ECF No. 14 at 7 (I was appointed to plaintiffs steering committee in class action for data breach impacting 494,969 individuals).

6. Of particular relevance here, I am currently litigating a case with co-movants, Andrew W. Ferich and Kate Baxter-Kauf, against GEICO for claims arising from a nearly identical incident as the one experienced by MAPFRE: GEICO's use of an auto-populating feature on its online quote tool, through which it pre-filled driver's license numbers. That highly analogous experience, combined with the foregoing extensive class action experience—particularly in data breach class actions—readily satisfies the requirements of Rule 23(g)(1)(A)(ii)-(iii).

7. In 2023, I was selected as a “Lawyer on the Fast Track” by the Legal Intelligencer. Every year since 2018, I have been selected by my peers as a Super Lawyers Rising Star. In March

2018, I co-authored the Practicing Law Institute's 23rd Annual Consumer Financial Services Institute – Chapter 57: *The Impact of Payment Card II on Class Action Litigation & Settlements*.

8. I litigate cases throughout the United States and am a member in good standing in the following states and have been admitted to the following courts:

- Florida
- Pennsylvania
- New Jersey
- United States District Court for the Southern District of Florida
- United States District Court for the Middle District of Florida
- United States District Court for the District of New Jersey
- United States District Court for the Eastern District of Pennsylvania
- United States District Court for the District of Colorado

9. In only the month that has transpired since MAPFRE first disclosed this data incident, Berger Montague has been contacted by nearly 100 individuals about this case, with many of whom Berger Montague has communicated.

10. The work my firm has done to date on this matter includes, *inter alia*, investigating potential legal claims arising from MAPFRE's failure to implement adequate and reasonable data security procedures and protocols necessary to protect Plaintiffs' and class members' sensitive information; investigating the circumstances surrounding the data disclosure incident; articulating the nature of the disclosure, namely that the incident was a result of how MAPFRE maintained its online quote tool and systems in a manner that allowed anyone accessing the site to input publicly available information and retrieve driver's license numbers therefrom; staying abreast of and analyzing reports, articles, and other public materials discussing the data disclosure incident and describing MAPFRE's challenged conduct; reviewing MAPFRE's incident notice, which identified the details of the data disclosure; fielding contacts from nearly 100 potential class members inquiring about this matter; investigating the nature of the challenged conduct at issue by interviewing multiple potential clients who contacted Berger Montague; investigating the adequacy of the named Plaintiffs to represent the putative class; drafting and filing the *Brown* complaint against MAPFRE; conducting substantial research and compiling research memoranda on legal issues relating to and the viability of a claim brought pursuant to the Drivers Privacy Protection Act, 18 U.S.C. §§ 2721, *et seq.* ("DPPA"), including a detailed analysis of the knowing disclosure requirement for claims brought pursuant to the DPPA; communicating internally amongst Plaintiffs' counsel regarding the most efficient manner to organize this litigation; working

with plaintiffs' counsel in other cases filed against MAPFRE to draft and file a motion to consolidate all such cases and taking steps to privately order and self-organize with counsel in other cases filed against MAPFRE; and working cooperatively, coordinating and continuing to meet and confer with Defendant's counsel and counsel for the other Plaintiffs regarding this litigation. The foregoing conduct and efforts satisfy the requirements of Rule 23(g)(1)(A)(i).

11. Berger Montague will commit appropriate resources to representing the class, as required by Rule 23(g)(1)(A)(iv). The firm has the resources—in terms of both money and attorneys and support staff—to meet any litigation or case management need, and is able to fully fund this (or any) litigation without reliance on any litigation financing.

12. A copy of Berger Montague's firm resume is attached hereto as **Exhibit A**.

The foregoing statement is made under penalty of perjury and is true and correct to the best of my knowledge and belief.

Date: September 29, 2023

/s/ Mark B. DeSanto
Mark B. DeSanto